IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1019 OF 2004

Smt. Poonam Malik ……Petitioner.

Versus

Sri Girish Chandra Bhatt and Others. ……..Respondents.

Counsel for the petitioner Sri Afsar Ali Khan and Sri B.S. Parihar.

Hon'ble Rajesh Tandon, J.

By the present Writ Petition, the petitioner has prayed for quashing of the order dated 5th October, 2004, by which the amendment application has been allowed.

Briefly stated, an application under Section 21 (1) (a) of U.P. Act No. 13 of 1972 was filed praying for the release of the residential accommodation in respect of the premises situate at Saint Francis Cottage, Tallital, Nainital consisting of 4 living rooms, kitchen and toilet bathroom. During the pendency of the application, an application was filed for amendment. The landlord wanted to incorporate the pleadings in respect of Section 21 (1) (a) as well as (b) by way of amendment. The paragraphs which are sought to be introduced by way of amendment are quoted below:-

"(A) That in the release application after the cause title in the under lined heading of the release application words "(1)(a)&(b)" be kindly added after figure Section 21.

(B) That after para No. 6 of the release application a new paragraphs numbered as 6A, 6B, be kindly be added as follows:-

6A. That the premises under the tenancy of the O.P. as well as the whole building is more than 90 years old and is n a very dilapidated and irreparable condition. The walls of the entire building are of mud and stones, which have out lived its life. The walls have developed significant cracks at many places and the comer joints of the walls have separated and are unable to bear the load of the building anymore. The ceiling of the ground floor is of Ballis and of wood. The Ballis have due to passage of time become rotten and spongy due to deterioration and have become concaue and unable to bear the load of the ceiling and of the upper floor anymore. The roof of the first floor which is of tin has also become rotten and having wholes at many places which have been file by 'Tar' the O.P. The roof of the first floor and the ceiling of the ground floor can fall down at any time even on a slit tremor or vibration. The floor of the ground floor which is on a mud based has been covered by several patches of cement damped at all times due to seepage water from the earth through joints collected by the huge retaining wall of St. Joseph College, Nainital which is behind the building in question. The foundation of the building in question requires to be constructed in such a manner to prevent the seepage of the water, which is impossible without the demolition of the building. Besides the floor the southern east side wall of the ground floor has developed the buldge due to continuous seepage of water and remains damped at all times because this wall is adjacent to the hill. Due to seepage of water the whole ground floor and the maximum portion of the walls of the walls of the building remains damp and the environment of the ground floor has become unhealthy, due to which the wife of the applicant is feeling difficulties in maintaining the

ground floor as residents of inmates of the hostel and she also desires complete demolition and reconstruction of the whole building, so that she be able to efficiently run the girls hostel in the ground floor and provide healthier atmosphere and good amenities to the hostlers. The municipal board Nainital also issued notice to the applicant about the dilapidated condition of the building."

"6 B. That the premises in question is bonafidely and genuinely required by the applicant for his own occupation of his family members after demolition and reconstruction."

(C) That in para 10 of the release application in the second line after the words "residential purposes" the word "after demolition and reconstruction" be permitted to be added."

So far as amendment as mentioned in Clause A is concerned, the same can not be allowed.

So far as Clause B is concerned, it consists of two parts; 6(A) and 6 (B).

So far as the amendment of paragraph 6 (A) is concerned, the landlord wanted to incorporate by way of amendment that the entire building is more than 90 years old and is in a very dilapidated condition. The aforesaid amendment is not a part of the amendment of 21 (1) (a) of U.P. Act No. 13 of 1972 and relates to the pleadings of 21 (1) (b) of U.P. Act No. 13 of 1972.

Initially, when the application was filed under Section 21 (1) (a) of the U.P. Act No. 13 of 1972, there was admittedly no dispute with regard to the dilapidated condition of the building and the application was simplicitor under Section 21 (1) (a) of U.P. Act No. 13 of 1972. It is well established that in order to prove case under Section 21 (1) (b) of the U.P. Act No. 13 of

1972, the ingredients of Rule 17 are required to be proved at the evidence stage.

However, in the present case, since the application has been filed under Section 21 (1) (a) of U.P. Act No. 13 of 1972, by incorporating the plea of 21 (1) (b) of U.P. Act No. 13 of 1972, it will change the nature of the proceedings.

So far as the plea with regard to Clause B is concerned, the same being part of Section 21(1) (a) itself, the amendment to that effect can be allowed. Section 21 (1) (a) reads as under:-

"21.(1) (a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held of him, either for residential purposes or for the purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;"

So far as the amendment as contained in Clause 6(C) is concerned, the same relates to the premises being bonafide and genuinely required for his own occupation after demolition and reconstruction. The aforesaid plea is a part of Section 21 (1) (a) of U.P. Act No. 13 of 1972 and consequential to the amendment of Clause B of the amendment application, the same deserves to be allowed.

It has been held by the Division Bench of the Allahabad High Court in Guru Prasad's case of 1997 ARC Page 462 that both the pleas under Section 21 (1) (a) for occupation in the existing form or after demolition and new construction can be

taken while deciding the application under Section 21 (1) (a) of the Act. Therefore, there is no quarrel with regard to paragraph 6 (B) and 6 (C) that the plea of demolition and reconstruction being a part of pleading of Section 21 (1) (a) itself, it will not change the nature of the case under Section 21 (1) (a) and therefore, the amendment has rightly been allowed. The amendment sought in paragraph 6(C), the same being consequential of the amendment of 6 (B) mentioned in paragraph 10 of the application under Section 21, the same can be allowed and will not in any way change the cause of action.

It has been held by the Division Bench of Allahabad High Court in the case of Guru Prasad Vs. First Additional District Judge (ARC 1997 Page 462) as under:-

"The learned Judge has categorically held that if "the building is required for personal occupation of the landlord whether in its existing form or after demolition 21(1)". The learned Judge has also not held that the building which is in dilapidated condition and which needs demolition and new construction cannot be released under Clause (a) even if the landlord bona fide requires it for his own occupation after demolition and new construction. In the case of Hans Raj Sharma (supra), the landlord's application under Section 21 (1) was rejected by the Prescribed Authority and the appeal filed by him before the learned District Judge was dismissed on the ground that his application is barred by first proviso to Section 21(1) as the period of three years has not elapsed since the date of purchase of the building by the landlord. This court treated the landlords application as the one falling under Clause (b) and therefore, held that the first proviso to Section 21 (1) will not apply to such a case. The controversy which we are called upon to decide in the instant case was neither raised nor

decided by the learned Judge in the case of Han Raj Sharma (supra). Any observation made or impression given by the learned Judge is that case which is contrary to what is contained in this judgment stands over-ruled.

7. Our answer to the question referred to is as under:-

"The need of the landlord under Section 21 (1) (a) can be considered even if the landlord had pleaded that the building is in dilapidated condition and requires demolition and new construction."

However, there being no bar in filing a separate application under Section 21 (1) (b) by the landlord by making out a case under the aforesaid Sub-section. If such an application is filed, the applications can be consolidated together and may be decided together.

Consequently, the writ petition is partly allowed. No order as to costs.

(RAJESH TANDON, J.)

15.10.2004

P.S.R.